
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 960 **Hearing Date:** March 22, 2022
Author: Skinner
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Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Public employment: peace officers: citizenship*

HISTORY

Source: University of California, Office of the President (UCOP)

Prior Legislation: AB 1096 (Rivas), Ch. 296, Stats. of 2021
AB 846 (Burke), Ch. 322, Stats. of 2020
SB 225 (Durazo), C. 790, Stats. of 2019
AB 3816 (Roos), Ch. 1473, Stats. of 1990
AB 3424 (Costa), Ch. 610, Stats. of 1988

Support: California Police Chiefs Association; California Public Defender's Association

Opposition: California Statewide Law Enforcement Association; Peace Officers' Research Association of California; Riverside County Sheriff's Office

PURPOSE

The purpose of this bill is to remove provisions of existing law requiring peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship.

Existing law requires each class of public officers or employees declared by law to be peace officers to meet the following minimum standards:

- Be a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship.
- Be 18 years of age or older.
- Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.
- Be of good moral character, as determined by a thorough background investigation.
- Be a high school graduate, or satisfy another minimum educational requirement, as specified.
- Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer. (Gov. Code §1031(a)-(f).)

This bill would remove the provision above that requires peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship.

Existing law contains an exemption from the citizenship requirement in Gov. Code §1031(a) for individuals employed as peace officers or peace officer trainees, or applicants to become a peace officer who were so employed or had applied prior to the adoption of that requirement, provided that they apply for and meet the requirements for United States citizenship as soon as possible. (Gov. Code §1031.5(a).)

This bill deletes this provision of law.

Existing law provides that any resident immigrant who is employed as a peace officer shall diligently cooperate with the United States Citizenship and Immigration Services in the processing of the officer's application for citizenship, and shall be disqualified from being a peace officer if citizenship is not obtained within 3 years of applying due to the officer's failure to cooperate in the processing of the application. Gov. Code §1035(b.).

This bill deletes this provision of law.

Existing law provides that any permanent resident immigrant who is employed as a peace officer shall be disqualified from holding that position if the officer's application for citizenship is denied. (Gov. Code §1031.5(c).)

This bill deletes this provision of law.

Existing law provides that no person shall be appointed as a member of the California Highway Patrol who is not a citizen of the United States. (Veh. Code §2267(a).)

Existing law provides that a non-citizen member of the California Highway Patrol appointed prior to the effective date of Vehicle Code §2267(a) shall become a United States citizen at the earliest possible time, and that inability or failure to comply with this requirement shall result in termination of employment. (Veh. Code §2267(b).)

This bill deletes these citizenship requirements for members of the California Highway Patrol.

COMMENTS

1. Need for This Bill

According to the author:

SB 960 simply removes the citizenship provision from the California peace officer employment requirement. It is an archaic requirement that is not inclusive or representative of the diverse population of people that make up our great state. In recent years, California has created numerous opportunities for anyone to apply for a myriad of careers. Many undocumented residents can pay in-state tuition at UC, CSU and the Community Colleges or be issued drivers licenses. They are eligible to serve as lawyers, practice medicine as physicians or nurses, and are eligible to receive professional licenses from the 43 CA Boards and Bureaus under the Department of Consumer Affairs. However, there is one profession that remains out of reach for

undocumented immigrants in California - serving as peace officers in the cities and communities where they grew up. This bill would act as an effective recruitment tool for the department and improve the current relationship between law enforcement and communities of color by increasing the visibility and representation of people from the neighborhood. There is no better person to serve and protect these communities, than the people who are local to those areas and are familiar with the people that live there. There should be no prohibition in place to prevent folks from protecting and serving the neighborhoods where they were raised.”

2. Law Enforcement Recruitment and Retention Issues

In recent years, law enforcement agencies around the country have experienced mounting challenges related to the recruitment and retention of sworn personnel. A survey conducted by the Police Executive Research Forum in June 2021 found that the departments surveyed were, on average, filling only 93% of the authorized number of positions available.¹ While this does seem striking at first glance, this number belies the fact that many larger departments are seeing dramatic drops in staffing. In Seattle, a record 180 officers left the police department in 2020, and another 170 departed in 2021, putting the agency at its lowest relative staffing level in history.² In Minneapolis, a severe shortage of officers has meant that on-duty officers are able to do little else besides respond to 911 calls.³ According to another recent survey conducted by the International Association of Chief of Police, 78% of respondent agencies reported having difficulty in recruiting qualified candidates, and 25% reported having to reduce or eliminate certain agency services, units or positions because of staffing difficulties.⁴

California has not been immune from officer recruitment and retention challenges. Between September 2021 and February 2022, San Diego lost over 100 officers, with 2022 being the first year the city expects to see retirements and departures outpace new hires.⁵ Similarly, as of August 2021, the Los Angeles Police Department had 296 empty officer positions and almost 500 fewer officers on duty than it did the previous year, and as of November 2021, San Francisco was short 533 officers relative to full staffing levels.⁶

While some argue that much of the shortfall is a direct result of vaccine mandates for public employees, the scope and duration of the shortage suggests that larger structural forces are at play. For instance, departments staffed by a higher proportion of baby boomers are seeing a wave of retirements, at a time when the attitude of millennials and “gen-Xers” toward police are changing. In addition, increased awareness of police misconduct, especially in low-income areas and communities of color, has sown greater mistrust of police in these communities, making it

¹ “Survey on Police Workforce Trends.” *Police Executive Research Forum Special Report*. 11 June 2021. <https://www.policeforum.org/workforcesurveyjune2021>

² *Ibid.*

³ *Ibid.*

⁴ “The State of Recruitment: A Crisis for Law Enforcement.” *International Association of Police Chiefs*. https://www.theiacp.org/sites/default/files/239416_IACP_RecruitmentBR_HR_0.pdf

⁵ “San Diego facing new police officer vacancy crisis blamed partly on vaccine mandate.” *The San Diego Union-Tribune*. 3 February 2022. <https://www.sandiegouniontribune.com/news/politics/story/2022-02-03/san-diego-facing-new-police-officer-vacancy-crisis-blamed-partly-on-vaccine-mandate>

⁶ “LAPD is short about 300 officers but the chief hopes to fill the gap.” *Los Angeles Daily News*. 20 August 2021. <https://www.dailynews.com/2021/08/20/lapd-is-short-about-300-officers-but-the-chief-plans-to-fill-the-gap/> ; “SFPD could be short 533 officers amid staffing strains from the vaccine mandate.” *ABC 7 News*. 1 November 2021. <https://abc7news.com/san-francisco-vaccine-mandate-sfpd-sf-city-workers-on-leave/11188916/>

more difficult for agencies to draw local applicants. Economically, low unemployment rates and a strong job market mean that prospective applicants have multiple options when seeking employment, many of which involve less rigorous entrance requirements.⁷

To address the staffing shortfall, law enforcement agencies have pursued a variety of potential solutions, such as increasing pay and benefits, scaling back job requirements, and hiring more non-sworn support staff. Some states have sought to address the problem and expand the applicant pool by removing or modifying officer citizenship requirements

3. Peace Office Citizenship Requirements

Currently, over 40 states have statutes, regulations, or administrative rules in place that restrict the ability of law enforcement agencies to employ non-citizens.⁸ Most of these states – California included – have statewide citizenship requirements, or a requirement that a non-citizen peace officer is at least a lawful permanent resident of the United States.⁹ Only three states have no statewide citizenship requirement for peace officers: Colorado, Vermont, and West Virginia. However, despite the absence of a citizenship requirement, federal law requires that any non-citizen that seeking employment in the United States must be authorized to work in the country by the United States Citizenship and Immigration Services (USCIS), via either an immigrant or non-immigrant visa.¹⁰ Thus, by omitting the citizenship requirement in state law, law enforcement agencies in these three states are permitted to hire anyone who is work authorized by USCIS. This bill seeks to add California to that category.

Existing California law requires peace officers to be either United States citizens or lawful permanent residents who are eligible for and have applied for citizenship. Additionally, existing law states that a peace officer applying for citizenship shall be disqualified from being a peace officer if citizenship is not obtained within 3 years due to the officer’s failure to cooperate with federal immigration authorities, or if the application is denied. A separate provision of law requires all members of the California Highway Patrol to be United States citizens.

By striking all of these provisions, this bill allows non-citizens with valid work authorization to obtain employment as peace officers in California. Among the categories of work-authorized non-citizens that would likely be eligible are permanent workers (immigrant visa based on employment), asylees and refugees, and individuals who are protected under the Program of Deferred Action for Childhood Arrivals (DACA).

⁷ For a more comprehensive analysis, see Wilson, Jeremy, et al. “Police Recruitment and Retention for the New Millennium.” *RAND Corporation*. 2010.

https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG959.pdf

⁸ “Advancing Diversity in Law Enforcement.” *U.S. Department of Justice Equal Employment Opportunity Commission*. October 2016. <https://www.justice.gov/crt/case-document/file/900761/download> ; “Backgrounder: Jurisdictions Permitting LPR Hiring.” *Law Enforcement Immigration Task Force (LEITF)*. August 2021.

<https://leitf.org/wp-content/uploads/2021/08/LPR-Hiring-Of-Law-Enforcement.pdf>

⁹ *Ibid*; For reference, a “lawful permanent resident” is a non-citizen who has been granted authorization to live and work in the United States on a permanent basis, commonly referred to as having a “green card.”

¹⁰ 8 CFR §247a.12; see also, “Statutes and Regulations.” *United States Citizenship and Immigration Services* website. <https://www.uscis.gov/i-9-central/form-i-9-resources/statutes-and-regulations>

4. SB 225 (Durazo, Ch. 790, Stats. of 2019)

In 2019, the Governor signed SB 225, which established that any person at least 18 years of age and a resident of California is eligible to hold an appointed civil office, regardless of that person's citizenship and immigration status. The measure also included several legislative findings and declarations, including:

- California has made great strides in integrating our immigrant population in all aspects, including passing laws that authorize health care for all children, professional licenses, driver's licenses, college grants, loans, and in-state tuition for eligible residents, regardless of their immigration status.
- California's democratic values of equal representation are upheld when our local and state government is diverse and representative of the people who reside in the state, and access to positions on governmental boards and commissions creates an avenue for people from multiple backgrounds and different experiences to serve the communities in which they live and beyond.

Although SB 225 did not apply to non-citizens' eligibility to become peace officers, this bill is in keeping with the findings and declarations included therein.

5. Local Citizenship Requirements

As mentioned previously, a handful of states currently do not have statewide citizenship requirements for peace officers. However, even within these states, some local jurisdictions and individual law enforcement agencies have mandated their own citizenship requirements. In Colorado, for instance, despite the absence of a statewide citizenship requirement, the cities of Aurora and Boulder require applicants to be lawful permanent residents, and the cities Denver and El Paso require applicants to be citizens.¹¹ This bill does not include any provision explicitly precluding local jurisdictions and agencies from instituting their own citizenship requirements. The Author may wish to clarify whether this outcome is in line with the intent of this bill.

6. Use of Service Weapons by Non-Citizen Peace Officers

The sponsor of this measure has indicated that a question may arise as to whether non-citizen peace officers in California may lawfully possess firearms, given certain federal prohibitions regarding gun possession. According to materials provided by the sponsor:

Any concerns regarding the ability of non-citizens or DACA individuals to carry firearms as police officers seem unfounded; non-citizens can carry a firearm exclusively for the purpose of their state employment (i.e. police officers) but may be restricted in other personal circumstances (i.e. applying for a personal concealed carry permit). Section 922(g)(5)(A) of the Federal Gun Control Act prohibits individuals who are "illegally or unlawfully in the United states" from possessing a firearm.

¹¹ Denver's citizenship requirement, which is incorporated in the city's charter, only applies to its police and fire departments. However, in 2016, the United States DOJ took legal action against the Denver Sheriff's Department for turning away non-citizens. The agency now accepts non-citizen applicants. For more about this, see <https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-denver-sheriff>

However, Section 925(a)(1) of the federal Gun Control Act exempts any firearm ‘issued for the use of ... any State or any department, agency, or political subdivision thereof.’ The Ninth Circuit Court has interpreted Section 925 narrowly, such that non-citizens may use firearms as long as they do so “exclusively for the purpose of their state employment.” *United States v. Subieto-Buan*, 985 F.2d 576 (9th Cir. 1993); see also *United States v. Cruz*, 50 F.3d 714, 716 (9th Cir. 1995) (‘§ 925(a)(1) applies to use of a firearm for a government purpose.’).

Additionally, given that any non-citizen employed as a peace officer under this bill must at least be work authorized, and that several other jurisdictions outside of California have successfully employed non-citizen officers, it is unlikely that they would fall under the ambit of the prohibitions in the Federal Gun Control Act.¹²

7. Argument in Support

According to the California Public Defenders Association:

There are many able, qualified individuals who desire to do something for the community by working in law enforcement but are ineligible because they are not citizens. Among them, are individuals known as “dreamers” who were raised and educated in the United States but are undocumented and thus, unable to become peace officers.

Effective policing requires peace officers who are part of the communities they police. It is also important that members of law enforcement reflect the diverse communities they serve. No one who is otherwise qualified and desires to become a police officer to help improve the communities in which they were raised or in which they live should be denied the opportunity simply because they are not United States citizens. With law enforcement staffing shortages across the state, increasing the pool of potential peace officers is critical and SB 960 will help do just that.

8. Argument in Opposition

According to the Riverside County Sheriff:

“In 1982, the United States Supreme Court in *Cabell v. Chavez-Salido*. 454 U.S. 432, 102 S. Ct. 735, 70 L. Ed. 2d 677 (1982) ruled that a provision in the California Government Code that requires peace officers to be United States citizens was, 1) not unconstitutional, 2) not discriminatory, and 3) California probation officers sufficiently partake in the sovereign's power to exercise coercive force of an individual that they may be limited to citizens.

[...]

“Aside from well-established legal precedent, becoming a United States citizen subjects the applicant to a thorough criminal background check conducted by the United States government.

¹² See also, *Hyland v. Fukuda*, 580 F.2d 977, 979 (9th Cir. 1978), in which the court held that a Hawaii felon was eligible to be a correctional officer and permitted to carry a firearm because the firearm was owned by, and used exclusively for, the state.

This ensures our government does not permit a violent felon, serious criminal offender, sexual predator, or someone with terrorist ties or propensities to live and work among our citizenries. [...] If this bill becomes law, our background investigators would not have the legal authority or investigative tools necessary to communicate with a hostile foreign nation over a non-citizen applicant's criminal or potential terrorist background."

[...]

"We cannot expect a non-citizen to uphold the principles and ideologies of our Constitution if they themselves have not pledged allegiance to our country."

-- END --